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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

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| In re Applications of |) | MM DOCKET NO. <u>92-111</u> |
| |) | |
| DEAS COMMUNICATIONS, INC. |) | File No. BPH-910208MB |
| |) | |
| HEALDSBURG BROADCASTING, INC. |) | File No. BPH-910211MB |
| |) | |
| HEALDSBURG EMPIRE CORPORATION |) | File No. BPH-910212MM |
| |) | |
| For Construction Permit for a |) | |
| New FM Station on Channel 240A |) | |
| in Healdsburg, California |) | |

To: The Commission

**MASS MEDIA BUREAU'S COMMENTS ON REQUEST FOR EXPEDITED
CONSIDERATION OF APPEAL OR, ALTERNATIVELY, MOTION FOR STAY**

1. On November 6, 1992, Deas Communications, Inc. ("Deas"), filed a Request for Expedited Consideration of Appeal or, Alternatively, Motion for Stay. The Mass Media Bureau submits the following comments.

2. Deas has pending before the Commission an Application for Review or, Alternatively, Motion for Extraordinary Relief filed on October 13, 1992. Therein, Deas seeks reversal of the Review Board's Memorandum Opinion and Order, FCC 92R-82, released October 21, 1992 ("MO&O"), which reinstated the previously dismissed application of Healdsburg Broadcasting, Inc. ("HBI"). The Bureau supported Deas' Application for Review because the Review Board seriously erred when it reinstated HBI's application. However, while the Bureau supports Deas' request for expedition in ruling on the Application for Review, we oppose Deas' Motion for Stay.

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3. Deas' Motion for Stay is procedurally defective because it is combined with a different request seeking expedited consideration. Section 1.44(e) of the Commission's Rules provides that "[a]ny request to stay the effectiveness of any decision or order of the Commission shall be filed as a separate pleading. Any such request which is not filed as a separate pleading will not be considered by the Commission." Accordingly, because the stay request is part of a request for expedited action, the stay request was improperly filed and should be dismissed.

4. When considered on its merits, the Motion for Stay should be denied. Deas correctly rehearses the well known criteria used in considering stay requests as set forth in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) and Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977): (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? (2) Has the petitioner shown that without such relief, it will be irreparably injured? (3) Would the issuance of a stay substantially harm other interested parties in the proceeding? (4) Where lies the public interest?


5. Deas is likely to prevail on the merits. The Bureau agrees with Deas that the Review Board committed reversible error when it reinstated the application of HBI. Moreover, in our

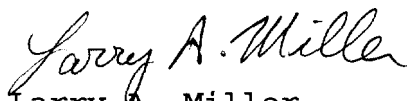
view, the Commission is likely to reverse the Review Board and dismiss HBI's application on review. However, this criterion alone is not determinative of whether a stay should be granted. Indeed, Deas has failed to demonstrate that it will be irreparably injured without the requested stay. Deas' only claim of irreparable injury is that it will have to incur litigation expenses in the comparative hearing now that HBI's application has been reinstated, and that trying the case on an expedited basis will be inconvenient. Precedent establishes that litigation expenses alone do not constitute irreparable injury which would warrant a stay. See Shurberg Broadcasting of Hartford, Inc., v. FCC, No. 84-1600 (D.C. Cir. December 21, 1984), relying on Renegotiation Bd. v. Bannerkraft Clothing Co., Inc., 415 U.S. 1 (1974).

6. While grant of the stay is not likely to cause harm to any of the other parties, it may delay the ultimate resolution of this proceeding in the unlikely event that the Commission does not dismiss HBI's application. Moreover, Deas has shown no significant public interest consideration which would warrant the stay. While it would serve Deas' private interest not to have to litigate this comparative hearing while its appeal is pending, the public interest would not be harmed. Rather, proceeding with the hearing schedule will put the Presiding Judge in a position to write his Initial Decision no matter which way the Commission decides the appeal.

7. In view of the foregoing, the Mass Media Bureau supports Deas' Request for Expedited Consideration of Appeal but opposes its Motion for Stay.

Respectfully submitted,
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November 13, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 13th day of November, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Request for Expedited Consideration of Appeal or, Alternatively, Motion for Stay"** to:

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